Monte L. Haney V-72067 HU-2B-53
Corcoran State Prison
P.O. Box 3476
Corcoran, CA 93212
In Pro Per

IN THE DISTRICT COURT
FOR THE NORTHERN DISTICT OF CALIFORNIA

MONTE L. HANEY,
PETITIONER,
V.
DERRAL G. ADAMS, WARDEN,
RESPONDENT.

No. C07-4682 CRB(PR)
TRAVERSE

Petitioner Monte Haney, in Pro Per, by way of Traverse to Respondent's Answer, alleges as follows:

1

Petitioner admits that he is in custody as stated by Respondent. However, Petitioner contends that his custody is "unlawful" for the reasons set forth herein and in the Petition for writ of Habeas Corpus and supporting exhibits.

2

Petitioner Denies Respondent's conclusion that State Court Rulings were not based on an unreasonable determination determination of facts or were not contrary to or involved an unreasonable application of clearly established united states Supreme Court Precedent.

Petitioner contends that he is entitled to relief on the following Grounds, as set forth in the Petition:

Ground one: trial counsel was ineffective Because he failed to object to the Prosecutors use of The Preemptory challenges Based on race.

Ground two: Prosecutor misconduct because he used the Preemptory challenges to exclude Potential Jurors Based on Race.

Ground three: the trial court's refusal to instruct on a Lesser included offense to torture violated defendant's due Process

3

Petitioner Agrees with the Respondent that that he exhausted his claims in the state court and that the Petition is timely within the meaning of 28 U.S.C. § 2244.

I. II. III. . I.C., II B., III B. Petitioner Denies and Disagrees with the Respondent and State Court Conclusions as set forth in the Respondent's memorandum of Points and Authorities. Pages 5 to 13.

4

Habeas relief, including but not limited to an evidentiary hearing should be granted, for the reasons set forth in the Petition and in the Points and Authorities in Support of the traverse.

5

Admitted that the AedPA Controls the disposition of this case. however, Petitioner contends that the state court denials of his habeas claims are Contrary to, and result from an unreasonable determination of, clearly established Law as Promulgated by the U.S. Supreme Court, and are a Product of an unreasonable determination of the facts.

6

Pg 2 of 73

Petitioner is entitled to relief on the claims set forth in 2

7

Acknowledged.

8

Wherefore, Petitioner respectfully requests:
(1) that an evidentiary hearing be granted on Grounds 1, 2, and 3;
(2) that the Court Grant the writ of Habeas Corpus;
(3) all other appropriate relief.

Dated: 9-5-08

Respectfully Submitted,
Monte L. Haney
MONTE L. HANEY
in Pro Per

table of Authorities

memo of Pts and Auths in Support of traverse

Haney v. Adams. Warden
C07-4682 CRB (PR)

Monte Littanel
Corcoran State Prison
P.O. Box 3476
Corcoran, CA 93212
In Pro Per

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Monte Littanel,
Petitioner,

V.

Derral G Adamswarden,
Respondent.

No. C 07-4682 CRB(PR)
Points and authorities in support of traverse

PRELIMINARY STATEMENT

Petitioner was charged in Sanfrancisco Superior Court with Aggravated mayHem Cal. Pen. Code § 205, torture Cal Pen Code § 206 Assault Cal. Pen code § 245 and Cal Pen Code § 12022.7. Subsequently the Jury reached verdicts of guilty on all counts. During the trial Petitioner established that he had a Long term methamphetamine abuse and substantial impaired brain functioning. (See exhibit K).

statement of Pertinent facts

at Pg 1 to 4 of Respondent's memorandum of Points and Authorities. Respondent reproduces essentially verbatim the statement of facts set forth in the first district appellate court's written opinion of Petitioners appeal. there do not appear to be any transcription errors Petitioner maintains that the facts which this court should consider to be established at trial are those in the Jury voir dire and Juror Questionaire Proceedings and the state court collateral Proceedings as referenced in the exhibits within the Points and authorities IN support of the traverse. (See exhibit B)(See exhibit D)

LEGAL ARGUMENT

INEFFECTIVE ASSISTANCE OF COUNSEL TRIAL COUNSEL

Petitioners trial counsel was ineffective During The Jury selection because he failed to object to the Prosecutor's use of the Premptory challenges in a Discriminatory manner. This violated Petitioner's Right to the effective assistance of counsel as guaranteed by 6th and 14th amendments to the U.S. Constitution. See Strickland v. Washington, 466 U.S. 668 (1984) (See exhibit A) During the Jury Selections the Prosecutor excluded the only two African American Potential Jurors. Based on Race and my trial Attorney Randy montesano failed to object to the Prosecutor's Discriminatory use of the Prerempitory challenges which "Prejudiced" the defendant Because Petitioner could not Preserve the issue on appeal. See strickland v. washington at 466 U.S. 686 actual "conflict of interest" adversely affecting Lawyers Performance renders assistance ineffective, a "wheeler error" which happened in this matter Requires that a Conviction Be set aside. any competent attorney would have objected to the Prosecutor's exclusion of African American Potential Jurors based on Race but my trial attorney failed to. Counsel's Performance fell below an objective standard of reasonableness because as a result of counsel's Deficient Performance I was Prejudiced because I could not raise a "wheeler error on appeal" and if

I would have been able to Raise the wheeler error on appeal I would have Received an automatic Reversal as the wheeler Law Requires. See Strickland v. Washington at 466 U.S. 685 The Sixth amendment recognizes the right to the assistance of counsel because it envisions counsel's Playing a role that is "Critical to the ability of the adversarial system to Produce Just Results" when the Prosecutor used the Preemptory challenges to exclude two African American Jurors Based on race my trial Attorney Consented and did not object. my trial Attorney has Been employed as a Lawyer for over fifteen Years and it is my contention he knew that a wheeler error requires a Automatic reversal the Deputy Attorney Generals Contention that my claim of ineffective assistance of counsel does not have merit is not true. (See Attorney General's memorandum of Points and authorities Pg 12 Line 3 and 4). the Attorney General Argues that it would have been futile for my trial Attorney to object to a "wheeler error" and the Prosecutors Purposeful exclusion of the only two Black Potential Jurors available, in which the Attorney General's statement is contrary to established Law that a Batson / wheeler error Requires automatic Reversal of a Conviction. (See A.G.'s memorandum of Points and Authorities Pg 13 Line 3 and 4) the Deputy Attorney General has applied a overly stringent standard of Determining an ineffective assistance of counsel

Pg 6 of 8

claim See strickland v. Washington at 466 U.S. 697 & 698 since fundamental fairness is the central concern of the writ of habeas corpus "no special standards" ought to apply to ineffectiveness claims made in habeas Proceedings. it is established U.S. supreme court Law that the Right to counsel is the Right to the effective assistance of counsel. See strickland v. Washington at 466 U.S. 686 "the right to counsel is the right to the effective assistance of counsel". when trial counsel failed to object to the Prosecutor's exclusion of one hundred Percent of African Americans during the Jury selection based on race he caused a Plain error which Prejudiced the defendant because trial counsel omissions caused a fundamental constitutional error to the Petitioner because I could not raise a Batson/wheeler error on appeal which Requires an automatic Reversal of a conviction. See fed. R. crim. P 52(b). the Deputy Attorney General Also concedes that trial counsel failed to make the Aforementioned objection. See A.G.'s memorandum of Points and Authorities Pg 8 Lines 11 and 12. (see exhibit B)

Ground two

"BATSON VIOLATION"

Jury selection was unconstitutionally tainted when the Prosecutor excluded qualified Jurors on the basis of Race. This violated Petitioner's Right to a Jury trial as guaranteed by Amendments

six and fourteen to the U.S. constitution. See Batson v. Kentucky 476 U.S. 79 (1986) During the Jury Selections the Prosecutor Patrick Mahoney used the Preemptory challenges to exclude all African American Prospective Jurors based on race. which violated Petitioners right to have a Jury trial of members from a fair cross section of the community. there were only two Potential African American Jurors Available in which the Prosecutor excluded both of them. See Johnson v. California 545 U.S. 162, 125 S. Ct. 2410 (2005) California Supreme Court acknowledged that it was suspicious that all three black Prospective Jurors were removed, were suffiient to establish a Prima facie case. During the Jury voir dire Proceedings the Prosecutor asked one Black male Prospective Juror if he would be able to make a fair Decision and the Black male Prospective Juror answered and told the Prosecutor he will do what he thinks is Right. afterwards the Prosecutor Questioned a Black female Prospective Juror and After the Questioning of Both these Potential Jurors, the Prosecutor used the Preemptory challenges to exclude Both of them and did not give a Race Neutral Reason for Doing So. See Paulino v. Castro 371 F.3d 1083, (9th Cir. 2004) defendant Can make Prima facie showing of bias by Prosecutor in use of Peremptory challenges based on statistical disparities alone. there were only two Available

African American Prospective Jurors and the Prosecutor used the Preemptory challenges to exclude both of them which is an overwhelming inference of discrimination. See Johnson V. California supra the Prosecutor excluded one hundred Percent of the Prospective African American Jurors which violated Petitioner's equal protection clause Rights to have members of his own Race Sit on the Jury. See Avery V. Ga. 345 U.S. 559, 561 (1953) Jury Selection based on Race warrants reversal of Conviction regardless of the Strength of the evidence Presented. the Prosecutor did not give a Race neutral Reason to exclude the African American Jurors and Because of the Prosecutor's omissions it PreJudiced the defendant and caused a fundamental Constitutional error to the Petitioner and Based on these facts Stated herein, habeas Relief is Warranted to the Petitioner. See Miller-EL V. Dretke, 125 S. Ct. 2317, 2340 (2005) racial discrimination during Jury Selection warrants Habeas relief. the Attorney General's Contention that Petitioner cannot "identify" which Jurors the Prosecutor challenged on Racial grounds and that a Prima facie case of discrimination cannot be established by Petitioner is not true. "Specifically" with reference to the Record During the Preemptory challenges the Prosecutor asked the Black male Prospective Juror if he would be able to

make a fair decision and the Black male Prospective Juror answered and said exactly, "I will do what I think is Right!(Quote)! Petitioner Request the court to Look at the Jury voir dire transcripts / Juror Questionaire and You will find the Blackmales statement in the exact words "I will do what I think is right."(Quote)! (see A.G.'s memorandum of Points and Authorities P98 Lines 24 and 25 P99 Lines 6 and 7). it is Petitioners contention that the Prosecutor did not Give a valid nuetral reason to exclude the Aforementioned Black male Prospective Juror. See Paulino V. Castro 371 f. 3d 1083 (9th Cir. 2004) at *1091- it does not matter that the Prosecutor might have had good reasons to strike the Prospective Jurors. "what matters is the real reason they were stricken." there was also a Black female that the Prosecutor excluded. the Prosecutor excluded the only two Black Prospective Jurors who were selected for the Preemptory challenges. by doing this, the Prosecutor used the Preemptory challenges to exclude one hundred Percent of African Americans who were eligible to serve on the Jury and as a result of the Prosecutors omissions no African Americans Sat on the Jury. there is no Lack of Specificity as the Deputy attorney General asserts in her answer and there is no conclusory allegations by the Petitioner in which I have stated accurate facts in this matter. the Deputy Attorney General has

P910 of 73

with reference to the Jury voir dire transcripts: the Black femal Said that She work's for muni. the Black male Said he is a Longshormen.

applied an overtly stringent standard in regards to Petitioner's Batson claim. The Deputy Attorney General claims that race neutral reasons were given by the Prosecutors to exclude Jurors but does not make reference in her answer to all Prospective/Potential Jurors. the Deputy Attorney General cannot say the Prosecutors made Race-neutral Reasons to exclude Jurors when she does not make reference in her answer to all Prospective Jurors of the Peremptory challenges. See Johnson v. California 545 U.S. 162, 125 S.Ct. 2410 (2005) California's "more likely than not" standard is an inappropriate yardstick by which to measure the sufficiency of a prima facie case of Purposeful discrimination in Jury selection. the Prosecutors exclusion of Prospective African American Jurors in state Court Resulted in Plain Constitutional error to the Petitioner. See O'Neal v. McANINCH. 513 U.S. 432, 130 L.Ed 2d 947. 115 S.ct 992 (1995) error violating federal Constitution in state criminal trial held not harmless - and federal habeas corpus petitioner held required to win - where habeas Judge has grave doubt as to harmlessness.

Ground three

INEFFECTIVE ASSISTANCE OF COUNSEL
APPELLATE COUNSEL

Petitioner's appellate Counsel was ineffective which violated Petitioners right to Counsel as Guaranteed by Sixth and fourteenth amendments of the U.S. Constitution. See evitts v. Lucey. 469 U.S. 387, 105 S.ct.

830.(1985). when appellate counseL was first assigned to Petitioner in 2005 I Requested a copy of my Jury voir dire transcripts so that I could file a collateraL Proceeding/writ of Habeas corpus to raise a batson wheeler claim. upon informing my appellate Attorney of this information he replied and told me that my claim was irrelevant and refused to issue the Jury voir dire transcripts as I had Requested.(See exhibit F) After the Appellate counsel's RefusaL I wrote my triaL attorney about this matter and he informed me that my appellate attorney was supposed to obtain the Juror voir dire transcripts for me.(See exhibit G). Petitioner also wrote the state Bar of caLifornia in Los angeles and they informed me that they were very concerned as to why the appellate counseL refused to give me my Jury voir dire transcripts(See exhibit H) the appellate counsel's omission PreJudiced the Petitioner Because as a result of appellate counsel's refusaL to obtain and issue to me a copy of the Jury voir dire transcripts, I could not attain them as copies to my state writ of Habeas corpus to Prove my wheeler error claim and as a result of this my Petitions were denied in the state courts. See Griffin v. ILLinois. 351 U.S. 12, 100 Led 891, 76 Sct. 585(1956) criminaL defendant has right to record on appeaL which includes complete

See also Gardner v. California, 393 U.S. at 370(1969) noting no suggestion made of an adequate substitute for a full transcript.

transcript of Proceedings at trial. (See exhibit B) the Deputy Attorney General in her answer does not address my claim of the appellate attorney's refusal to give me an issue of the Jury voir dire transcripts at all. the Jury voir dire transcripts were a Prerequisite to a decision of the merits of my state writs of Habeas corpus and the Jury voir dire transcripts situation has not been addressed by the state courts and neither the Deputy Attorney General. in which this is a very crucial issue and a substantial claim of my Petition in Regards to a wheeler/Batson error and the failure of state courts and Deputy Attorney General to address this situation seems Suspicious.

Ground four

MISINSTRUCTION ON ELEMENTS OF OFFENSE

The Jury verdict was rendered in the absence of Proper instructions on every element of the offense. this violated Petitioners right to a Jury trial as guaranteed by amendments 6 and 14 of the U.S. Constitution See U.S. v. Gaudin, 515 U.S. 506, 115 S.Ct. 2310 (1995), fed. R. Crim P. 52(b). During the Pretrial Proceedings my trial attorney Requested that the Judge give to the Jury a Jury instruction of assault as a Lesser included offense to torture and the Judge refused to do it. See James v. Kentucky, 466 U.S. 341, 80 L.ed 2d 346, 104 S.ct. 1830 (1984) The Judge failed/refused to give requested instructions. The

Supreme Court reversed and Held that state statutes did not take Precedent over Constitutional Law and that the Judge had to give the requested instruction, when the trial Judge refused to give the Requested instruction, it Relieved the State of its burden of Proof on the critical Question of intent see Francis v. franKLin, 471 U.S. 307, 85 Led 2d 344, 105 S.ct 1965 (1985) Sandstrom v. Montand, 442 U.S. 510, 61 Led 2d 39, 99 S.ct 2450 (1979) Trial Courts instructions cannot impermissibly shift the burden of Proof to the defendant. (See exhibit I - R.T. 1009.) when the Judge Refused to give the Requested instruction, it omitted an essential element of the charged offense. See Hovicarey 332 f.3d 587 (9th cir. 2003) when a Jury instruction omits a necessary element of the crime, "Constitutional error has occurred." the trial Judge's omission was a Plain error and PreJudiced the Petitioner Because it allowed the Prosecution to Convict me on a Judication of Less than beYond a Reasonable Doubt. See Carella v. California 491 U.S. 263, 109 S.Ct. 2419. (U.S. Cal. 1989) Due Process clause of the fourteenth amendment denies states Power to deprive the accused of liberty unless Prosecution Proves beYond a reasonable doubt "everY element" of the charged offense; Jury instructions relieving states of this burden violate a defendants due Process rights. (See exhibit I - R.t. 1009.) there was overwhelming

and uncontradictory evidence that Petitioner was very heavily intoxicated for 10 days, each day Prior to, and on the day that the Petitioner was arrested of Methamphetamine and when the trial Judge Refused to give the Requested instruction she unconstitutionally excluded the methamphetamine evidence. See U.S. v. Sayetsitty, 107 F.3d 1405 (9th cir. 1997) at *1413 "in a Prosecution for a specific intent crime, intoxication (although voluntary) that Precludes formation of the requisite intent may be established as a defense." U.S. Supreme Court Precedent has established that a defendant in a Jury trial has a constitutional Right to establish a complete defense and when the Judge refused to give the requested instruction to the Jury, I was deprived of that right. See Crane V. Kentucky 476 U.S. 683, 106 S.Ct. 2142, (1986) at *2147 the Constitution guarantees criminal defendants "a meaningful opportunity to Present a complete defense." the 9th circuit has established that courts must give a defendant "wide Latitude" to establish evidence in a crimal Proceeding. See U.S. V. Sayetsitty supra stating that Parties may argue any reasonable inferences from the evidence, and the court must give them "wide latitude" to do so. (See exhibit I- R.T. 1009)

the Jury instructions by the Judge was constitutionally inadequate because they did not Permit the Jury to consider Mitigating evidence such as intoxication

and a "Lack of a specific intent" because the trial Judge unconstitutionally excluded such evidence by failure to give a Lesser included offense instruction as to the torture charge. See Penry v. Johnson, 532 U.S. 782, 784 the Court in 2004, held that mitigating evidence must be Presented to the Jury if Such evidence meets the Standard Low-threshold test for relevance. California Jury instructions Rule 4.21 Say's that if evidence Shows that a defendant was intoxicated You should consider that fact in deciding whether a defendant had the Required Specific intent. (See exhibit J). based on the evidence of intoxication the Judge Should have Gave a Lesser included General intent instruction as to the torture charge but the Judge refused to do so. (See exhibit I-R.T. 1009) See fiore v. white, 531 U.S. 225, 228-29 (2001) due Process Violated by Conviction of defendant without Proving each element of crime beyond a reasonable doubt.

the Deputy Attorney General Contends that the Supreme Court has Concluded a Defendant is entitled to a Lesser included offense instruction in a Capital Case. the Deputy Attorney General's Contention is not true. U.S. Supreme Court Precedent has held that a defendant is entitled to an Lesser included offense instruction if the evidence Warrants it. See Keeble v. U.S. 412 U.S. 205 (1973) Defendant is entitled to instruction on lesser included offense if

evidence would Permit Jury rationally to find him guilty of the lesser offense and acquit him of the greater.

Ground five

in Deny'ng Petitioners claims of facts of the constitutional errors stated within this Petition. The State Court came to Conclusions that were Contrary to Supreme Court Precedent, See williams v. Taylor 529 u.s. 362 120 s.ct. 1495 (2000) the Supreme Court held that "Contrary" to means that a State Court (1) arrived at a Conclusion or Question of law opposite that Reached by the Supreme Court Precedent, or (2) when Confronted with materially indistinguishable facts from a Supreme Court Precedent, arrived at an opposite Result. (See exhibit B) the Deputy Attorney General Contends that the State Courts Reasonably Concluded and Reasonably Rejected Petitioners claims of Prosecutorial misconduct, ineffective assistance of trial Counsel, ineffective assistance of appellate Counsel and Refusal of Jury instruction. the Deputy Attorney General's Contention is not true and an unreasonable determination of the facts. (See Deputy Attorney Generals memorandum of Points and authorities Pg 8 Line 13, Pg 12 Line 25, Pg 13 Line 10, Pg 6 Line 14). Petitioner filed state writ of Habeas corpus in all State Courts and Requested an evidentiary heaving which were denied. the State Court's Denial of my writ of Habeas corpus claims on ineffective assistance of Counsel and Prosecutorial misconduct withholding a evidentiary heuring

was an objectively unreasonable determination of the facts. See Taylor v. Maddox 366 F.3d 992, (9th cir 2004) when state court has made findings against Petitioner on those facts "without first ordering a evidentiary hearing. the states fact finding Procedure is deemed "unreasonable which means the States factual findings are not binding on federal Habeas corpus. (See exhibit B) (See exhibit C). furthermore, Petitioner diligently Pursued the Aforementioned claims in the State Courts and the writs of Habeas corpus were all denied without first holding an evidentiary hearing. therefore Petitioner should receive an evidentiary hearing before a decision is rendered in this case. See williams v. Taylor, 529 U.S. 420 146 L.ed.2d 435, 120 S.ct. 1479 (2000) Holding that because Prisoner diligently Pursued claim in state court, and was denied a hearing. he was entitled to a hearing in federal court. Petitioner diligently Pursued factual claims of ineffective assistance of counsel for failure to object to the Prosecutors Discriminatory use of the Peremptory challenges and the Prosecutors exclusion of all blacks from the Jury Based on Race. (See exhibit B and C) Petitioner also tried to obtain his voir dire transcripts from his appellate attorney in which he denied. (See exhibit F) After Petitioner was denied the Jury voir dire transcripts by his appellate counsel, I contacted my trial counsel who told Petitioner that it was my appellate attorney's

Responsibility to obtain and issue the voir dire transcripts to the Petitioner.(See exhibit G) Petitioner also tryed to obtain the Jury voir dire transcripts from the appellate court and state writ of Habeas Corpus and a subsequent writ of mandate which were all denied(See exhibit D)(See exhibit E). as a result of Being Denied the Jury voir dire transcripts, Petitioner had no evidence to support his state writ of Habeas Corpuses, which were denied in which the State court are culpable because they Refused to Give me the voir dire transcripts After the Petitioner diligently Pursued them. (See exhibit B). Petitioner made a formal complaint to the State Bar of California about this matter who Replied and informed me that they were concerned as to why my appellate attorney Refused to obtain and issue Petitioner's Jury voir dire transcripts (See exhibit H) further more, During the State trial, the trial Judge gave a Lesser included offense instruction to aggravated mayHem and refused to Give a Lesser included offense instruction of torture which made the trial unbalanced. (See exhibit I - R.t. 1009 & R.t. 955). for all the reasons stated in Ground five, Petitioner should receive an evidentiary hearing. See townsend v. Sain 83 S.Ct. 745. 372 U.S. 293 (1963) federal Court on habeas Corpus must hold evidentiary hearing if applicant did not Receive full and fair evidentiary hearing in state court, either at time of trial or in collateral Proceeding.

Petitioner needs the Jury voir dire transcripts as a Discovery device to the fact that the Prosecutor used the Preremptory challenges to exclude 100 Percent of the Prospective African American Jurors Based on race. Petitioner has Diligently Pursued the voir dire transcripts in the state courts by wal of writ of mandate and writ of Habeas Corpus but the Petitions were denied which Prejudiced the Petitioner and Impeded me from Litigating m'l claim of the Trial Prosecutors use of the Preremptory challenges based on Race. see Eskridge V. Washington Prison Bd 357 U.S. at 215. 78 S.Ct. at 1062. 2 L.ed.2d 1269 1958 "noting State's failure to show availability of trial notes." (See exhib.t D). also. Petitioner filed three Seperate writ of Habeas Corpus in Superior court, first appellate district court, and the California Supreme Court with the factual claim of trial Prosecutor Patrick Mahoney's use of the Preremptory challenges based on Race which Resulted in the exclusion of 100 Percent of all Prospective African American Jurors and the Aforementioned **state** courts denied the claim without Possesion of or a review of the Jury voir dire transcripts which further Prejudiced the Petitioner of a opportunity to decide the issues of the claim and Denied the Petitioner a chance to Received a "full and fair

See Mayer v. city of chicago 404 U.S. 189 (1971) The state must Provide FULL verbatim record of criminal trial. - RE: voir dire transcrips.

hearing." (See exhibit B) on July 31. 2008 the Deputy Attorney General Michele Swanson filed the Jury voir dire transcripts under seal which has further prejudiced the Petitioner and Impeded my opportunity to receive a full and fair hearing and to receive the Documentary evidence of the trial Prosecutors exclusion of all prospective African American Jurors based on race. the state court and the Deputy Attorney General has prevented the Petitioner from receiving the Jury voir dire transcripts which are very crucial portions of the Proceedings and are needed to determine the facts and a decision on the merits of this writ of Habeas Corpus. (See exhibit B)(See exhibit D) and see the Deputy Attorney Generals Proposed order to seal the Jury voir dire transcripts Dated July 31 2008. when the state courts and the Deputy Attorney General Refused to disclose the Jury voir dire transcripts to, the Petitioner it has created a "substantial and injuriors effect" on the courts Decision in this matter. See Kennedy v. Lockyer. 379 f. 3d 1041, 1054 (9th cir 2004) failure to Provide Complete transcript of Prior Proceedings had "substantial and injurious effect" on the Jury's Verdict. the Deputy attorney General Michele Swanson contends that the Record does not support the Petitioner's

Contention of the trial Prosecutor's use of Preemptory challenges to exclude all of the Prospective African American Jurors based on Race, the Deputy Attorney General has admitted that the trial Prosecutor's use of the Preemptory challenges is difficult to address on the Record alone therefore the Deputy Attorney General cannot Identify which of the Prospective African American Jurors were African American and the Deputy Attorney General's Contention that my allegation are Conclusory is absolutely false. I Dont know how the Deputy Attorney General Can Say my allegation is Conclusory when she has admitted that she cant identify the ethnicity of any of the Prospective Jurors. when the Petitioner alleges "specific facts" which if true would entitle him to relief see ortiz v. stewart 149 f3d 923, 934 (9th cir. 1998) and the truth of those facts cannot be determined from the Record, an evidentiary hearing may be appropriate, see Baja v. Ducharme 187 f.3d 1075, 1078 (9th cir. 1999) (See also townsend v. sain and Micheal williams v. Taylor supra.) (See Deputy Attorney General's answer. memorandum of Points and Authorities P 8 Line 26) here the Deputy Attorney General concedes that she Cant identify the ethnicity of the Prospective Jurors.

Page 22 of 24

See Habeas corpus Local Rule 2254-7. evidentiary Hearing. (a) Request for evidentiary Hearing.

Because of the conflict between the Deputy Attorney General and the Petitioner with regards to the identity or ethnicity of the Prospective African American Jurors the Petitioner Request an evidentiary hearing before a Decision is made on the merits of the trial Prosecutors use of the Preemptory challenges to exclude all of the Prospective African American Jurors Based on Race, the Deputy Attorney General filed the voir dire transcripts under seal on July 31 2008 which has Prevented the Petitioner from obtaining the Documentary evidence of the Prospective Jurors and Based on that issue Petitioner Request an evidentiary hearing. and finally because of ineffective assistance of counsel, the trial Prosecutor Patrick MaHoney's use of the Preemptory challenges to exclude 100 Percent of Prospective African American Jurors Based on Race, and the trial Judge's Refusal to Give Requested Jury instructions, Petitioner did not receive a fair trial and these omissions Caused a fundamental Constitutional error to the Petitioner. See Duncan V. State of La, 88 S.Ct. 1444, 391 U.S. 145 (1968) a right to Jury trial is Granted to criminal defendants in order to Prevent oPression by Government U.S.C.A. Const Amends 6, 14.

Conclusion

Based on the foregoing, Petitioner should be granted an evidentiary hearing on his claims, and the Petition should ultimately be granted.

Dated: 9-5-08

Respectfully Submitted

Monte L. Haney
in Pro Per

Monte Haney V-72062 4A-2R-59
Corcoran State Prison
P.O. Box 3476
Corcoran, CA 93212
In Pro Per

IN THE U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Monte L. Haney, Petitioner.
v.
Derral G. Adams, warden, Respondent.

No. C07-4682 CRB(PR)
notice of Lodging Records
civil L.R. 1-5(e), fed. R. civ. P. 10(c) & 11(a).

Petitioner Monte Haney Lodges the following exhibits in connection with traverse and memorandum of Points and Authorities in support there of.

Exhibit A: Page 6 of writ of habeas corpus with continuation page. no. C07-4682.

Exhibit B: State writ of habeas corpus. Denial of claims ineffective assistance of counsel and Prosecutor exclusion of 100 Percent of African American Prospective Jurors Based on race without holding evidentiary hearing. true and correct. (take Judicial notice).

Exhibit C: Motion for evidentiary hearing that was Denied in State Supreme Court.

Exhibit D: writ of Habeas corpus and writ of mandate Requesting Jury voir dire transcripts that was Denied in State court. (take Judicial notice).

Exhibit E: Letter from first district appellate Pro Ject in my Request for Jury voir dire transcripts.

Exhibit F: Letter to and from appellate Attorney william cafriola Request and Denial of Jury voir dire transcripts. true and correct.

Exhibit G: Letter from trial Attorney Randy montesano who informed me that my appellate Attorney could have obtained Jury voir dire transcripts.

exhibit H: Letter from State Bar who informed me that they were concerned that I did not Receive my Jury voir dire transcripts. (take Judicial notice).

Pg 1 of 2

notice of Lodging Records
CIV L.R. 1-5(e) fed.R.civ.P.
10(c) + 11(a)

Exhibit I: Reporter's transcript RE Denial of Requested Jury instruction pg 1009. (take Judicial notice.)(pg 955 take Judicial notice.)

Exhibit J: CalJic 4.21.

Exhibit K: Brain Spect Imaging Report and transcript with Discussion of that matter.

Date: 9-5-08

Respectfully Submitted
Monte Abrey

pg 2 of 2

EXHIBIT A

EXHIBIT A

need more space. Answer the same questions for each claim.

[Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

Claim One: trial Judge Carrol Yaggy refused to give Requested Jury instructions to the Jury.

Supporting Facts: MY trial Attorney Requested that the Judge Carrol Yaggy give a Jury instruction of P.C. 245 Assault as a Lesser included offense to torture and she refused see notice of Lodging Records exhibit A lines 18 to 25, 19 to 22, & 1991009 lines 13 to 18 also, there was uncontradictory evidence that I was intoxicated.

Claim Two: ineffective assistance of Appellate and trial Counsel

Supporting Facts: MY trial Attorney refused to object to the fact that the Prosecutor Patrick Mahoney used the Preemptory challenges to exclude All African Americans from the Jury Panel my appellate attorney did not raise arguable issue in my Appellate Brief that I Received 5 Convictions for one crime & one course of Conduct see Post-trial motion 049 #.

Claim Three: Prosecutor Misconduct vinductive Prosecution Denial of right to Jury of Petitioners Peers.

Supporting Facts: The Prosecutor Patrick Mahoney used the Preemptory challenges to exclude all African Americans from my Jury, as a result I was Deprived of the right to a Jury of fair cross Section of the Community. The Prosecutor did not give a race neutral reason to exclude All African Americans from my Jury.

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

These grounds were raised in writ of Habeas Corpus.

continuation of Claim TWO

Also my Appellate Attorney Refused to obtain the Jury voir dire Record as I Requested him to do and he refused to raise the fact in my Opening Brief as I Requested that he do and he could of done if he would have obtained my Jury voir dire Record transcripts to substantiate the claim. See People v. Valenzuela (1985) 175 Cal.3d 381, 392, 222 cal RPtr 405.

EXHIBIT

B

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

Department No. 22

IN THE MATTER OF THE APPLICATION OF

MONTE HANEY

Petitioner,

FOR A WRIT OF HABEAS CORPUS

WRIT NO. 5517

SUPERIOR COURT NO. 2052283

ORDER

On February 23, 2007, Petitioner Monte Haney ("Petitioner") filed a Petition for Writ of Habeas Corpus. A jury convicted Petitioner of: (1) aggravated mayhem; (2) torture; (3) aggravated assault; (4) assault with a deadly weapon; (5) willful infliction of corporal injury on a cohabitant; and (6) criminal threats. The court sentenced Petitioner to life in prison with the possibility of parole plus seven years.

A. Background

Petitioner appealed his sentence. On appeal, he contended that the torture conviction must be overturned because the trial court failed to instruct the jury that aggravated assault was a lesser included offense of torture. He also claimed that the aggravated assault conviction must be stricken as a lesser included offense and that the court sentenced him under the wrong subsection of Penal Code section 120227. On December 20, 2006, the First District Court of Appeals rejected Petitioner's first two

contentions but modified the judgment to comport with the jury's findings on the great bodily injury enhancement.

Petitioner also filed a petition for a writ of habeas corpus with the First District Court of Appeal. On July 20, 2006, the Court of Appeal denied the petition on the grounds that Petitioner had not exhausted his administrative remedies nor provided a record sufficient to allow informed appellate review.

B. Petitioner's Current Habeas Petition

Petitioner seeks habeas relief on the following grounds: (1) his trial and appellate counsel violated his right to effective assistance of counsel; (2) the trial judge improperly refused to instruct the jury on lesser included offenses; and (3) the trial judge, the prosecuting attorney and the public defender "conspired to illegally and unlawfully sentence" him and to vindictively prosecute him. For the reasons discussed below, the Court rejects these claims and denies the petition.

1. Petitioner's Ineffective Assistance of Counsel Claims

Over two years after his conviction, Petitioner now claims that his trial counsel provided ineffective assistance of counsel because he apparently failed to "properly investigate claims and defenses of [Petitioner's] charges." (Petition for Writ of Habeas Corpus ("Petition") at 5.) More specifically, Petitioner claims that his trial attorney failed to obtain a urine sample taken from Petitioner and, as a result, he was "deprived of his right to obtain a jury determination on every material issue presented by the evidence." (Petition at 5.) Petitioner does not explain how his counsel's alleged failure to obtain the urine sample prejudiced him or deprived him of his right to have a jury determine every material issue presented by the evidence.

"To establish ineffective assistance of counsel . . . a defendant must show that counsel's representation fell below an objective standard of reasonableness under prevailing professional norms, and that counsel's deficient performance was prejudicial, i.e., that a reasonable probability exists that, but for counsel's failings, the result would have been more favorable to the defendant." (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688; *People v. Waidla* (2000) 22 Cal.4th 690, 718.)

Petitioner's claims about his trial counsel's performance have no merit for three reasons. First, Petitioner has not provided any evidence to support his claims. (*See People v. Duvall* (1995) 9 Cal.4th 464, 474.) Conclusory allegations made without any explanation of their basis do not warrant relief. (*People v. Karis* (1988) 46 Cal.3d 612, 656; *see also In re Swain* (1949) 34 Cal.2d 300, 303-304.) Second, even assuming Petitioner's claims about his attorney's conduct at trial are accurate, his claims fail because he has not demonstrated that his counsel's performance "fell below an objective standard of reasonableness" and that there is a reasonable probability that, but for counsel's alleged errors, "the result of the proceeding would have been different." (*People v. Ledesma* (1987) 43 Cal.3d 171, 218.) "When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." (*Id.* at 218, citing *Strickland, supra,* 466 U.S. at 693-94].)

Finally, Petitioner's ineffective assistance of counsel claim fails because he has failed to justify the nearly two-year delay between the trial and the date he filed his habeas petition. Although "denial of ineffective assistance of counsel is one trial error which is cognizable on collateral review whether or not it was raised on appeal . . . any significant delay in seeking collateral relief on this ground must be fully justified." (*People v. Jackson* (1973) 10 Cal.3d 265, 268.) Petitioner has not justified his delay, and the Court rejects his ineffective assistance of trial counsel claim for this additional reason.

Next, Petitioner claims his appellate counsel provided ineffective assistance by refusing to raise issue of the denial of Petitioner's right to a "jury trial of [his] peers" claim on appeal. (Petition at 8.) "Peremptory challenges may not be used to systematically exclude jurors because of membership in a cognizable group distinguished by racial, religious, ethnic or similar characteristics." (Cal. Crim. Law, Practice and Procedure (2006) § 29.30 p. 862, citing *People v. Wheeler* (1978) 22 Cal.3d 258, 276 and *Batson, supra*, 476 U.S. at 84; *see also* Cal. Code Civ. Proc. § 231.5.) It is well settled, however, that appellate counsel "performs *properly* and *completely* when he or she exercises discretion and presents only the strongest claims instead of every conceivable claim." (*In re Robbins* (1998) 18 Cal.4th 770, 810, emphasis in original.) In the Petition, Petitioner states that his appellate attorney sent him

a letter in June 2006 notifying him that "the fact that [Petitioner] had no African Americans on [his] jury . . . had no merit in his case." (Petition at 5.) Petitioner does not attach a copy of this letter to his writ petition, nor does he on appeal.

As an initial matter, Petitioner has not provided any documentary evidence to support his claim that the prosecutor systematically excluded African Americans from the jury. (*Duvall, supra,* 9 Cal.4th at 474.) As discussed above, conclusory allegations made without any explanation of their basis do not warrant relief. (*Karis, supra,* 46 Cal.3d at 656; *Swain, supra,* 34 Cal.2d at 303-304.) Second, Petitioner has not alleged any circumstances supporting a reasonable inference that the prosecutor challenged African Americans because of their membership in a group, rather than because of any specific bias. (*People v. Box* (2000) 23 Cal.4th 1153, 1188.) Finally, Petitioner's claims with respect to his appellate counsel's performance fail because he has not demonstrated that his counsel's performance "fell below an objective standard of reasonableness" and that there is a reasonable probability that, but for counsel's alleged errors, "the result of the proceeding would have been different." (*Ledesma, supra,* 43 Cal.3d at 218.) For these reasons, this Court must reject this ground for habeas relief.

2. Petitioner's Claim That the Trial Judge Failed to Instruct the Jury on Lesser Included Offenses

Next, Petitioner claims that the trial judge refused to instruct the jury that aggravated assault is a lesser included offense of torture. (Petition at 7.) Petitioner raised this issue on appeal and the First District considered, and rejected, it. As "a general rule, '[h]abeas corpus will not serve as a second appeal.'" (*In re Harris* (1993) 5 Cal.4th 813, 825, citing *In re Foss* (1974) 10 Cal.3d 910, 930.) Because "the issue was previously raised and rejected on direct appeal, and because the [P]etitioner does not allege sufficient justification for the issue's renewal on habeas corpus, the issue is procedurally barred from being raised again." (*Harris, supra,* 5 Cal.4th at 825; *see also In re Sakarias* (2005) 35 Cal.4th 140, 145.) Accordingly, this Court rejects Petitioner's claim for relief on this ground.

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3. Petitioner's Claim That the Trial Judge, the Prosecuting Attorney and the Public Defender "Conspired to Illegally and Unlawfully Sentence" [illegible]

Finally, Petitioner contends that the trial judge, the prosecutor and the public defender conspired against him and "subjected [him] to vindictive prosecution." (Petition at 6.) This Court cannot conduct a meaningful review of this claim because Petitioner has not provided any evidentiary support. (*Duvall, supra,* 9 Cal.4th 464, 474.)

Moreover, Petitioner has not justified the lengthy delay between when the jury was sworn and the filing of his writ petition. Under well-established California law, a petition should be filed as promptly as the circumstances allow. (*In re Clark* (1993) 5 Cal.4th 750, 765). Where there has been significant delay in seeking habeas corpus relief, a petitioner must justify or explain the delay. (*Id.*) To avoid the bar of untimeliness, the petitioner has the burden of establishing: (1) the absence of substantial delay; (2) good cause for the delay; or (3) that the claim falls within an exception to the bar of untimeliness. (*Robbins, supra,* 18 Cal.4th at 781.) Petitioner cannot meet this burden here because he offers no justification whatsoever for his delay in seeking habeas relief. His petition is devoid of any facts demonstrating good cause for the delay or that his claim falls within an exception to the bar of untimeliness. (*Id.* at 781; *Clark, supra,* 5 Cal.4th at 775.)

For the foregoing reasons, Petitioner's Petition for Writ of Habeas Corpus is DENIED.

4/4/07
Date

Judge of the Superior Court

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re MONTE HANEY,

on Habeas Corpus.

A116381

(San Francisco County
Super. Ct. No. 189793)

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Ruvolo, P.J., and Reardon, J., joined in the decision.)

Date: JAN 18 2007 RUVOLO, P.J.

P.J.

S152455

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re MONTE HANEY on Habeas Corpus

The petition for writ of habeas corpus is denied.

GEORGE

Chief Justice

EXHIBIT

C

EXHIBIT C

Monte Haney #V-72062 4A-2R-08
Corcoran State Prison
P.O. Box 3476
Corcoran, CA 93212

Supreme Court of California

Monte Haney
VS.
Warden, Derral G. Adams

Motion for evidentiary Hearing Pursuant to 28 U.S.C. 2254(d)(1)

Petitioner, Monte Haney Request an evidentiary Hearing as authorized thru statute and case Law Micheal Williams V. taylor.

this Request for evidentiary hearing is Based on grounds that state executive officials violating my Federal constitutional Rights Based on Decisions "Contrary" to Federal law and U.S. Supreme Court Precedents, ordinances, Judicial Decrees and/or Decisions.

therefore as Authorized and mandated by state law and State Court Procedure, I the Petitioner Monte L. Haney is compelled to file this Motion for evidentiary hearing and therefore Diligently Seeks Authorization from state Court and Government a grant of evidentiary hearing Requesting that state Court executive officials who were involved in my trial Court and Appellate Court Process explain why they made their decisions in which my contention are Contrary to established federal law and federal legislation Decisions.

See Micheal williams V. Taylor, 2000 Daily Journal D.A.R. 3967 Supreme Court of united States Decision Pg 3972 Dated wednesday 4-19-2000. Diligence will require in the usual case that the Prisoner, at a minimum, seek an evidentiary hearing in state court in the manner Prescribed by state law.

see Page 3971 A Prisoner who developed his claim in state Court and can Prove the state court's decision was "contrary to, or an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States." is not barred from obtaining relief by 2254(d)(1). See williams V. Taylor at (Opinion of O'Connor J.).

See 28 U.S.C. 2254(d)(1)(2000) in williams V. Taylor, the Supreme Court held that "contrary to" means that a state Court (1) arrived at a conclusion or Question of law opposite that Reached by the Supreme Court; or (2) when Confronted with materially indistinguishable facts from a Supreme Court Precedent, arrived at an opposite Result. See 529 U.S. 362, 405 (2000).

in febuary 2005 I Received a Jury trial by trial Judge Carol Yaggy in San francisco Superior Court Dept. 28. During the Jury trial and Course of Jury instructions my trial Attorney Requested that the trial Judge give instructions to the Jury that Assault as a Lesser included offense to torture and the Judge refused to give the requested instruction/admonition. (See notice of Lodging Records exhibit A Pg 1009 Line 13 to 18).

See James V. Kentucky 466 US 341, 80 Led 2d 346, 104 Sct 1830 1984) The Judge refused to give requested instructions, the Supreme Court reversed and held that state statute DID not take Precedent over Constitutional law and that the Judge had to give the requested instruction/ admonition stare decisis.

trial Judge Carral Yaggy refusal to give the requested Jury instruction was a "clear error" Also, Simutaneously When the Judge refused to give the requested instruction to the Jury she violated my federal Constitutional Rights of the 5th and 14th amendment Procedural Due Process

that I was extremly intoxicated at the time of the Alleged Crime. So when Judge Carrol Yaggy refused to give the requested Jury instruction she Deprived me of my federal Constitutional Right to have the Jury make a Determination and Decision Based on every element of the crime. (See notice of Lodging Records Exhibit A Pg 1 of 6 9 13 to 18, Pg 1 of 6 lines 19 to 22 and Pg 1 of 6 lines 18 to 25).

See US V. Gaudin, 515 US 506, 132 Led 2d 444, 115 Sct 2310 (1995) failure to submit "entire" element of crime to Jury, when Properly Preserved request is made is treated as structural and is "reversible error" without regard to harm. See US V. Gaudin at *2310, Due Process and sixth amendment give criminal defendant right to have Jury determine, beyond reasonable doubt, guilt of every element of crime with which defendant is charged U.S.C.A. Const. Amend 5, 6, 14.

Trial Judges Carol Yaggy's failure and omission to give the Requested Jury instruction to the Jury trial resulted in "structural error" in which she showed Callous Disregard to my Constitutional Rights Leaving the Jury with the option of finding me guilty of torture OR not guilty of any crime at all therefore violating my Constitutional Rights of the fifth and Sixth amendment to the U.S. Constitution to receive an fair and Impartial Jury trial.

See Sullivan v. Louisiana 113 Sct. 2078, 508 U.S. 275 (1993) Constitutionally deficient reasonable doubt instruction requires reversal of Conviction, and is not amenable to harmless error analysis. U.S.C.A. Const Amend 6. See Sullivan v. Lousiana at *2083 the other Consisting of "structural defects" which affect the framework within which trial Proceeds" Id at 310 111 Sct at 1265 and require automatic reversal. There is a "strong Presumption" that any error will fall into the first of these categories. The Court hold today that the reasonable-doubt instruction Given at Sullivan

in Cage V. Louisiana 498 U.S. 39, 111 S.Ct. 328, 112 Led 2d 339 (1990) (Per Curiam, amounts to structural error, and thus Cannot be harmless regardless of How overwhelming the evidence of Sullivans guilt. Where the Jury views the evidence from the lens of a defective reasonable doubt instruction, the Court Reason there Can be no factual findings made by the Jury beyond a reasonable doubt in which an appellate court Can ground its harmless-error analysis, See ante at 2082.

it is my Contention that when Judge Carol Yaggy refused to give the requested Jury instruction/Admonition to Jury of Assault as a Lesser included offense of torture she violated my federal Constitutional rights of Procedural Due Process of the 5th and 14th amendment Also the Judge did not follow CalJic Rule 4.21 "voluntary intoxication when relevant to specific intent, which say's the Court should Consider that fact in deciding whether defendant had the required specific intent mental state, and it is my Contention that I DID not have the "mental State" to be found guilty of the specific intent to Commit a Crime of torture, and Judge Caral Yaggy's failure and omission to give Assault as a Lesser included instruction to the Jury was clearly Defective in which the Materiality, relevance, of My Severe Intoxication in the Matter was the Prime Mover in which the Judge was Supposed to give the requested instruction According to U.S. Supreme Court Precedent, See Cage v. Louisiana 498 U.S. 39, 112 Led 2d 339, 111 S.Ct 328 (1990) Reasonable Doubt instruction which initially instructed that to Convict guilt must be found beyond reasonable doubt, but which then equated "reasonable doubt with "grave uncertainty" and actual Substantia doubt" and Stated that what was required was "Moral certainty" that defendant was guilty, could have been interpreted by reasonable Juror as allowing finding of guilt based on degree of Proof that required by due Process clause U.S.C.A. Constamend 14

See other controlling case law, Stewfelt v. Alaska 228 f 3d 1088 9th cir. 2001 "structural errors call into Question the very accuracy and reliability of the trial Process and thus are not amenable to Harmless error analysis, but require automatic reversal. see Ho v. Carey - when a Jury instruction omits a necessary element of the crime, Constitutional error has occurred. Ho v. Carey, 332 f 3d 587 (9th cir. 2003), see Menendez v. Terhune, 422 f 3d 1012 (9th cir. 2005) error in Jury nstructions may so infect a trial that the resulting Conviction violates Due Process. Based on the Aforementioned facts, (See notice of lodging Records, Exhibit A trial transcripts Pg 1009 lines 13 to 18, Pg 1006 ines 19 to 12 and Pg 1008 lines 18 to 25) in the fair Administration of Justice", I request that the Court Grant an Evidentiary hearing or the Judge Carol Yaggy Come to Court and explain why she efused to give the requested Jury instruction in which her ailure/and omission to Do So have violated Supreme Court Precedent ind my federal Constitutional rights of the fifth and fourteenth mendment to Procedural Due Process and Also Sixth amendment right to an Impartial Jury trial. See Chapman v Cal 386 U.S. at 23 n.8 right to Impartial Judge not harmless error see Liljeberg v. Healthser V. Cor P. 486 U.S. 847, 100 Led 2d 855, 108 Sct 2194 (1988) Right to a fair trial is basic Requirement of Due Process and includes right of unbiased Judge.

and 2. the trial Prosecutor Patrick t. MaHoney used the Preemptory hallenge to exclude All African Americans from my Jury Panel. luring the Jury Selection Process I observed Patrick MaHoney Question Potential African American Jurors who were eligible to be Part of the Jury and in the exclusion of these Potential Jurors Prosecutor Patrick MaHoney gave no Logical Reasoned basis to exclude them. see trevino v. texas 503 US 562, 118 Led 2d 193, 112 Sct 1547 (1992 id Batson v. Kentucky 476 U.S. 79, 90 Led 2d 69, 106 Sct 1712 (1986) Fundamental remise of Batson and its Progeny is that criminal defendants and excluded urors alike are denied equal Protection of Laws when trial Jury is onstructed in racially discriminatory manner.

(6)

Ground 3. On or About August, 2005 I wrote my ex APPellate Attorney and informed that I thought that the Prosecutor used the Peremptory challenges to exclude all african Americans from my Jury and I Requested that my APPellate Attorney william J. caPriola Raise it as a collateral issue in a Wende Brief and my APPellate Attorney refused and told me that is irreluvant. it is my contention that any Diligent Attorney would have raised any Legitimate Arguable issue for his client. and by APPellate Attorneys william J. caPriola failure to Do So I Receive ineffective assistance of APPellate counsel. as a result of APPellate Attorney's william J. caPriola omission, I filed a formal complaint against him to Los angeles state Bar RE: inquiry number 07-15816 as a result the State Bar wrote and told me that they were concerned about my complaint and instructed my APPellate Attorney william J. caPriola to contact me and Alleviate the Situation but william J. caPriola failed and/or refused to Do So. See Evits V. Lucey 469 U.S. 387, 83 Led 2 821, 105 Sct 830 (1985) Defendants right to effective assistance of counsel applies not Just at trial but also on direct appeal. see Also Delgado V. Lewis 223 f. 3d 976, 980-82 (9th cir 2000) (APPellate counsel's failure to raise any arguable issues in appellate brief was ineffective assistance. my APPellate Attorney william J. caPriola Also refused to obtain my "Jury voir dire" transcripts. I wrote several Letters to william J. caPriola and Requested that he obtain and issue my Jury voir Dire transcripts and he refused. (see notice of Lodging Records Exhibit 9). it is my contention that william J. caPriola omission to obtain and issue the Jury voir dire transcripts Impeded my opportunity to Present a cognizable Legal claim. See Griffin V. ILLinois 351 US 12, 100 L.ed 891, 76 Sct 585 (1956) criminal Defendant has right to Record on APPeal which includes complete transcript of Proceedings at trial. See Also Cooper-Smith V. Palmateer 397 f. 3d 1236, 1239 n. 4. 1242 (9th cir. 2005) though court Presumes factual findings are correct in effective assistance of counsel is a mixed Question of law and fact not entitled to Presumption of correctness.

in the Proper Administration of Justice I Request that Judge carol Yagey, Prosecutor Patrick MaHoney and APPellate Attorney william J. caPriola be SUBPOENA to court for an evidentiary hearing in which I will also be Present.

I would Like to bring Attention to the Court that I have a writ of Habeas corPus Pending in this Matter No S152455 filed May 4 2007

Mark Allen

8-14-07

EXHIBIT

D

EXHIBIT D

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

Department No. 22

IN THE MATTER OF THE APPLICATION OF

MONTE HANEY

Petitioner,

FOR A WRIT OF HABEAS CORPUS

WRIT NO. 5558

ORDER

On April 12, 2007, Petitioner Monte Haney ("Petitioner") filed a Petition for Writ of Habeas Corpus. Petitioner asks the Court to provide him with a copy of the "jury voir dire record transcripts."

A. Procedural History

A jury convicted Petitioner of: (1) aggravated mayhem; (2) torture; (3) aggravated assault; (4) assault with a deadly weapon; (5) willful infliction of corporal injury on a cohabitant; and (6) criminal threats. The trial court sentenced Petitioner to life in prison with the possibility of parole plus seven years. Petitioner appealed his sentence. On December 20, 2006, the First District Court of Appeal rejected Petitioner's first two contentions but modified the judgment to comport with the jury's findings on the great bodily injury enhancement. On April 18, 2007, the Supreme Court denied review.

On February 23, 2007, Petitioner filed a Petition for Writ of Habeas Corpus in this Court on the following grounds: (1) his trial

and appellate counsel violated his right to effective assistance of counsel; (2) the trial judge improperly refused to instruct the jury on lesser included offenses; and (3) the trial judge, the prosecuting attorney and the public defender "conspired to illegally and unlawfully sentence" him and to vindictively prosecute him. On March 27, 2007, this Court denied his petition.[1]

B. Petitioner's Request for Voir Dire Transcripts

In his current petition, Petitioner contends that this Court must provide him with "jury voir dire record transcripts" because he is an "indigent prisoner." (Petition for Writ of Habeas Corpus at 3.) He claims that he needs the voir dire transcripts because he is in the process of preparing a "Federal writ of Habeas Corpus." (Attachment to Petition for Writ of Habeas Corpus at 3:15-19.) As discussed below, Petitioner is not entitled to receive a free copy of the voir dire transcript because he has not demonstrated how the transcript will assist him in connection with his federal habeas corpus petition.

Courts consider two factors to determine whether the defendant has demonstrated a need for a transcript: (1) the transcript's value in connection with the proceeding for which it is sought; and (2) the availability of alternative devices that would fulfill the same function as the transcript. (*Britt v. North Carolina* (1971) 404 U.S. 226, 227-230; *see also* Cal. R. Ct. 8.324(b)(2)(A) [requiring the application for additional records to "describe the material to be included and explain how it must be useful to appeal"].) Petitioner has not met his burden here because he does not explain why he needs the transcripts for his federal habeas corpus petition.

For the foregoing reasons, Petitioner's Petition for Writ of Habeas Corpus is DENIED.

5/23/07
Date

Judge of the Superior Court
JAMES J. McBRIDE

[1] Petitioner also filed a Petition for Writ of Habeas Corpus in the California Supreme Court. On October 11, 2006, the California Supreme Court denied the petition.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

Department No. 22

Monty HANEY Petitioner **vs.** **SUPERIOR COURT OF SAN FRANCISCO** Respondent; **PEOPLE OF THE STATE OF CALIFORNIA** Real Party in Interest.	**WRIT NO. 946** **ORDER DENYING PETITION FOR WRIT OF MANDATE**

This Court has received a petition for writ of mandate.

In the petition, Monty Haney ["Petitioner"] complains that Department 22 of this Court ["Respondent Court"] erred in denying his petition for writ of habeas corpus requesting transcripts of the jury voir dire proceedings at his trial.

//

Section 1985 of the California Code of Civil Procedure states the circumstances under which a court may issue a writ of mandate. The section authorizes a court to issue a writ of mandate to any inferior tribunal "to compel the performance of an act which the law specially enjoins … or to compel the admission of a party to the use and enjoyment of a right … to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal." (*Cal. Code of Civ. Pro.* § 1085, subd. (a).)

Here, a writ of mandate is not proper because the Court would not be issuing the writ to an inferior tribunal. Petitioner is requesting Department 22 of the Superior Court to issue the writ to itself. Because section 1985 of the California Code of Civil Procedure does not authorize the remedy requested, the petition for writ of mandate is DENIED.

19 Sept. 2007
Date

Charles Haines
Judge of the Superior Court

EXHIBIT

E

EXHIBIT E

FIRST DISTRICT APPELLATE PROJECT

730 Harrison Street, Suite 201• San Francisco, California 94107 • (415) 495-3119 • Facsimile: (415) 495-0166

March 26, 2007

Mr. Monte Haney, V-72062
4A1L43
Corcoran State Prison
P.O. Box 3476
Corcoran, CA 93212

Re: *People v. Monte Haney*, A110037

Dear Mr. Haney:

This office has received your letter regarding the transcripts in your case. After consulting with your counsel on appeal, William Capriola, I was informed that no voir dire transcripts were prepared for your appeal. This is not unusual, since voir dire is not transcribed as part of the normal record on appeal. Thus there are no voir dire transcripts which can be forwarded to you.

If you believe that the transcripts of your voir dire are important to your federal petition for writ of habeas corpus, you may attempt to get them directly from the individual court reporter from your trial. That court reporter can be contacted via the superior court clerk's office. Good luck.

Sincerely,

STEPHANIE CLARKE
Staff Attorney

cc: William Capriola

EXHIBIT

F

EXHIBIT F

Monte Haney V-72062 4A1L43
Corcoran State Prison
P.O. Box 3476
Corcoran, CA
93212

2-27-07

William J. Capriola
P.O. BOX 1536
Sebastopol, CA
95473

Hello Mr Capriola! Approximately a week ago I Receiv my transcripts. I need to Know if the Supreme Court has made a decision on the Petition that you file Also, I need Documentation of Jurors names, race etc, Voir dire List, Venire Pool, Voter registration List, Jury Selection Process etc, would you Please Provide all of the above information Immediatly? Also, wha are my options as far as continuing my appeal? Previously I asked you to Raise the claim that there were no blacks on my Jury and you told me it was irrelevant. Would you tell me why you think it was irrelevant?

WILLIAM J. CAPRIOLA
Attorney at Law

Post Office Box 1536
Sebastopol, California 95473
707 • 829 • 9490 tel/fax

March 26, 2007

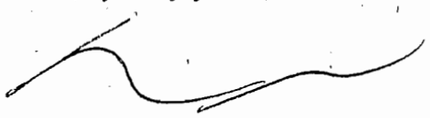
Monte Haney, V-72062
Corcoran State Prison
P.O. Box 3476
Corcoran, California 93212

Re: *People* v. *Haney*, A110037

Dear Mr. Haney:

Thank you for your correspondence. Your petition for review is stilling pending in the California Supreme Court. As for the juror voir dire transcripts, I didn't send them to you because I don't have them. Voir dire is not part of the normal record on appeal. In order to be made part of the record, there must be some indication that the voir dire transcript may contain a potentially meritorious appellate issue. There was no evidence of this in your case. I recognize you believe your rights were violated because there were no African-Americans on your jury. However, as I told you before, since your trial attorney did not raise any objection to the composition of the jury, there was no issue for me to raise on appeal.

Very truly yours,



William J. Capriola

EXHIBIT

G

EXHIBIT G

RANDY MONTESANO
[redacted]
Attorney at Law
214 Duboce Avenue, San Francisco, CA 94103
415-431-8226 — 415-255-8631 - fax
rmontesano@hotmail.com

LEGAL MAIL

April 4, 2007

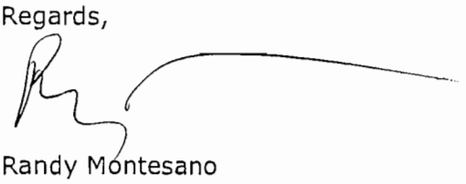
Monte Haney
#V-72062 4A2R-8
Corcoran State Prison
P.O. Box 3476
Corcoran, CA 93212

Dear Monte:

In response to your letter dated 3/29/07, regarding obtaining transcripts of the voir dire, that is something I cannot help you with. The transcripts of the voir dire proceedings should and could have been obtained by your appellate lawyer at no cost to you before the filing any briefs. If he did not obtain them, the only way to get them is to contact the court reporter and order them through her. The problem is you will have to pay for that and that is very expensive. Unfortunately, as I said before, I cannot be of any help to you in this regard.

Why your former appellate attorney will not communicate with you is a mystery to me. In any event, I am sorry to hear you lost your appeal and wish you the best of luck in your habeas petition.

Regards,



Randy Montesano

RM/dma
/encls

EXHIBIT

H

EXHIBIT H

THE STATE BAR
OF CALIFORNIA
1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

OFFICE OF THE CHIEF TRIAL COUNSEL
INTAKE

TELEPHONE: (213) 765-1000
TDD: (213) 765-1566
FAX: (213) 765-1168

May 29, 2007

Monte Haney
V72062 4AIL 43
Corcoran State Prison
P.O. Box 3476
Corcoran, CA. 93212

RE: Inquiry Number: 07-15816
Respondent: William John Capriola

Dear Mr. Haney:

You have complained that William John Capriola has been discharged and not returned your documents to you. Your complaint concerns us. However, it is hoped that bringing your complaint to the attorney's attention will resolve this matter.

We have advised the attorney to contact you within ten (10) working days from the date of this letter, regarding the availability of your client file. Under the Rules of Professional Conduct, the attorney is not required to mail or deliver the file to you. Whether you, or a designee, pick up the file from the attorney's office or the attorney mails the file to you, is a decision to be made between you and the attorney.

Should the attorney fail to contact you within the specified time, please recontact the State Bar. At that time, we will determine if further action is needed.

At this time, your complaint file is being closed, without prejudice.

Very truly yours,

N10

EXHIBIT

I

EXHIBIT I

The interesting issue there is -- which I think is a little different here, but I just want to make a record -- in that case there were many allegations of assault with a deadly weapon and there was lots of weapons that were used. I think there were chains, a tire iron, a couple other things. And in looking at the information -- as well as, I think, other -- I don't know if there was just a soft or a simple 245(a)(1) with just force likely to produce great bodily injury without a weapons allegation.

In the context of this case, as alleged in Count 3, which is the torture count, the People have alleged, both in terms of the use of a deadly weapon -- and I think my position to be very, very clear -- is that this case is not a torture case, but for the popping out of the eye, which a jury could find was nothing more than -- well, among other things, but in the context of torture, they should have the option of finding that that is just an assault with force likely to produce great bodily injury.

And it's my contention that that's really what this is. And, therefore, because of that, I would argue and request that, with respect to the torture charge, that the 245(a)1 be a lesser-included and should be given.

THE COURT: 245(a)1, assault by means of force likely to produce great bodily injury?

MR. MONTESANO: Correct.

THE COURT: All right. Mr. Mahoney.

MR. MAHONEY: Yes, Your Honor.

Upon review of Martinez and specifically, I believe, the

have an element of torture or if you have a charge of torture, and when you look at the underlying facts for the torture charge here, but for her eye coming out, this no way would be a torture case. It just wouldn't be. Because if you had a torture case in that scenario, every assault would be, automatically be, a torture case. Every attack upon any individual would automatically be a torture case. It would blur the distinctions here. It's clear that it's certainly arguable that if the eye comes out, they can make that kind of an argument for many different reasons.

And it seems to me that by leaving in an allegation there that oh, there was a deadly weapon used, sort of is a distortion of and misuse of this particular charge. And now they can just sort of throw in a deadly weapon allegation every time there's a torture charge when, in fact, the deadly weapon really has nothing to do with the actual torture charge that's before the Court.

So I guess what I'm asking the Court to do is look through this artificial technical pleading thing that they have done, "they" being the prosecution, and analyze it in a way, and really consider that an assault with force likely to produce great bodily injury, which occurred in this case because of her eye being taken out, is really the essence of the torture charge and that, therefore, this is and should be given as a lesser-included.

THE COURT: The Court has reviewed the Martinez case carefully and has also reviewed our case carefully, and I think if the only allegation in this case was the removal of the eye

with the hand, if that were the only allegation, I think there might be some argument for what you described under Martinez, but that's not the only allegation we have here. We also have several stab wounds that have been alleged. Those have been alleged with a deadly weapon.

And so this case presents us with a combination of assaultive behavior that, in the charging, that that combination of all those things is part of the charging, and I don't think it's the Court's function to decide what act is the essence of the torture charge. I think that is precisely what a jury is to decide, whether or not the acts were committed and, if they were committed, whether they constitute torture.

So because we have both actions relating to the use of hands alone and deadly weapon allegations, I don't think that Martinez serves as authority for me to find that, in this case, that a 245(a) by means of force likely to produce great bodily injury is appropriate as a lesser-included offense, so that request is denied.

MR. MONTESANO: Okay.

THE COURT: All right. I have provided counsel with copies of the instructions. I'd ask you to review them. If you see anything that's a glaring problem or error, please let me know. I tried to put them in the order I thought was appropriate.

And I'll take a recess now, we will come back, we will start with instructions. Depending on what time I finish, I indicated that we will take a five-minute break after I finish, anyway, to give everybody a break. Then we will start with Mr. Mahoney's argument. Because my instructions may take an hour or so, it

AGGRAVATED MAYHEM IS COUNT 3.

MR. MAHONEY: 2.

THE COURT: IT'S 2.

MR. MONTESANO: AND I PUT "AND ANY LESSER CRIME TO COUNT 2," THEN, BECAUSE THAT IS A GENERAL INTENT CRIME.

THE COURT: RIGHT, BECAUSE THAT LESSER IS THE MAYHEM WHICH IS A GENERAL INTENT CRIME.

MR. MONTESANO: I'M SORRY, YOUR HONOR.

THE COURT: SO, I AGREE, "ANY LESSER CRIME AS TO COUNT 2."

MR. MONTESANO: "AS TO COUNT 2." AND I THINK THAT'S ALL. THEN YOU GOT TO DEAL WITH -- OH, WE ALREADY DID THE ALLEGATIONS, SO, YEAH, THAT'S IT. THEN IT GOES DOWN TO, "THERE MUST EXIST," AND I THINK EVERYTHING ELSE IS THE SAME.

MR. MAHONEY: YES.

THE COURT: ALL RIGHT. MADE THOSE CHANGES. 3.31 THE SPECIFIC INTENT ONE. SO THIS WOULD BE COUNTS 1 --

MR. MONTESANO: I PUT IN "THE CRIMES CHARGED IN COUNTS 1, 2, 3 AND 7," AND THEN I PUT "AND IN THE" -- "AND ANY LESSERS TO COUNT 1 AND ALSO THE SPECIAL ALLEGATION AS TO COUNT 1 THERE MUST EXIST" -- AND THE ISSUE'S GOING TO BE WHETHER THERE'S OTHER OF COURSE SPECIFIC INTENT CRIMES ALLEGED, WHICH I DON'T THINK THERE IS, WITH TORTURE, AGGRAVATED AND CRIMINAL THREAT. WE'RE ONLY TALKING ABOUT COUNT 1.

THE COURT: THAT'S RIGHT.

MR. MONTESANO: SO WE HAVE TO DEAL WITH THE SPECIAL PREMEDITATION, AND THEN WE HAVE TO DEAL WITH THE ATTEMPTED VOLUNTARY MANSLAUGHTER. HOWEVER THE COURT IS COMFORTABLE DOING THAT, WHATEVER LANGUAGE YOU WANT, BUT THAT'S THE SUBSTANCE OF

EXHIBIT

J

EXHIBIT J

CALJIC 4.21

VOLUNTARY INTOXICATION—WHEN RELEVANT TO SPECIFIC INTENT

In the crime[s] of Penal code 206 and [206,] [and _____,] of which the defendant is accused in Count[s] _____, [or that of _____, which [is a] [are] lesser crime[s] thereto,] [or in the allegation that _____] a necessary element is the existence in the mind of the defendant of the [specific intent to _____] [mental state[s] of _____].

If the evidence shows that the defendant was intoxicated at the time of the alleged crime, you should consider that fact in deciding whether defendant had the required [specific intent] [mental state].

If from all the evidence you have a reasonable doubt whether the defendant formed that [specific intent] [mental state[s]], you must find that [he] [she] did not have that [specific intent] [mental state[s]].

USE NOTE

Penal Code section 22, subdivision (b) specifies that intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, premeditated, deliberated or harbored express malice aforethought, when murder or a specific intent crime is charged. [definition action of ill will

If the trial includes crimes requiring both general and specific intent, or a particular mental state, use CALJIC 4.21.1.

However, do *not* give this instruction where there is evidence of voluntary intoxication in cases charging assault with a deadly weapon on a peace officer, assault with a deadly weapon, or simple

EXHIBIT

K

EXHIBIT K

Amen CLINICS

"Change Your Brain, Change Your Life"

Amen Clinics, Inc
A Medical Corporation

Daniel G. Amen, MD
Director

BRAIN SPECT IMAGING REPORT

Date: 8/31/2004

Patient Name: Haney, Monte
Referring Professional: Atty. Randy Montesano

Studies and Dates Performed:
Resting study: 8/19/2004
Concentration study: 8/12/2004

The concentration scan was performed under the following medications: None

Brain SPECT Information:

Brain SPECT scans help delineate the brain physiology underlying psychiatric and neurological problems and may or may not fully correlate with the clinical diagnoses, since the diagnosis of many psychiatric and neurological problems are based on symptoms clusters and not on underlying brain problems. Clinical correlation is essential for this information to be used appropriately.

Brain SPECT Findings and Conclusions:

The most significant finding on this study is overall decreased perfusion, seen on both scans, worse with concentration.

1: Overall decreased perfusion seen with concentration, and moderate scalloping seen at rest.

2: Brain trauma. The pattern of findings is consistent with brain trauma. These findings include.

3: Decreased perfusion in the left inferior orbital prefrontal cortex seen on both studies, worse with concentration, and decreased anterior prefrontal cortex perfusion seen on both studies.

4: Decreased left and right temporal lobe perfusion seen on both studies.

5: Decreased left and right parietal lobe perfusion seen with concentration, and decreased right parietal lobe perfusion seen at rest.

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Recommendations:

Given this constellation of findings, if the clinical symptoms warrant, one might consider:

1. An anticonvulsant (such as Neurontin, Trileptal, Lamictal, Gabatril, Depakote, or Tegretol) to calm focal areas of increased activity and/or stabilize temporal lobe function, enhance mood stability, and/or calm irritability. Current research suggests that Neurontin is good for patients with irritability or anxiety, while Depakote and Lamictal are better for patients who have bipolar spectrum tendencies. A supplement alternative might be GABA.
2. A stimulating antidepressant, such as Effexor, to enhance prefrontal cortex function and calm cingulate and thalamo-limbic hyperactivity. A supplement alternative might be St. John's Wort or 5HTP plus SAMe or L-tyrosine.
3. A memory enhancement protocol, that would include the following (for adults):
   - Both physical and mental exercise, to boost nerve growth factors in the brain,
   - Avoid any behaviors that increase the risk for a brain injury,
   - Fish oil to boost the level of omega-3 fatty acids in the brain,
   - Alpha Lipoic Acid, 100 - 300mg twice a day, for its antioxidant effects,
   - Acetyl-L-Carnitine, 500-1,000mg, 2 to three times a day,
   - Vitamin E 400 international units twice a day and Vitamin C 250mg twice a day as antioxidants,
   - Phosphatidal Serine: 100mg twice a day for 2 weeks then 100mg three times a day for memory (if appropriate),
   - Gingko Biloba (Ginkoba, Ginkgold): 60-120mg twice a day for energy, concentration and focus (to enhance cerebral blood flow),
   - Low dose ibuprofen (100-200mg a day) to increase blood flow and help decrease beta amyloid plaques that may be involved in causing memory problems,
   - Coenzyme Q10 (CoQ10) to help with energy and memory, especially if Parkinson's disease is present or in the family. The dose of CoQ10 is 100 – 400 mg/day.

See Appendix I for a technical description of the study parameters.

See Appendix II for a rating sheet with a detailed analysis of each brain region.

See Appendix III for more explanation about the findings.

See Appendix IV for labeled illustrations that you can compare to your actual SPECT images to see where the findings on the scan are located.

See Appendix V for detailed information about brain systems and how we interpret their function at the Amen Clinics.

Sincerely,

Daniel G. Amen, MD
CEO, Amen Clinics, Inc.
Board Certified in Child, Adolescent, and Adult Psychiatry
Licensed in Nuclear Brain Imaging

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most incredible thing that he said: When I looked at this man two years later, this is as good as he gets. The closer in time to what was going on, in my opinion, he said, it would be much worse.

And Myla Young, Dr. Myla Young, in her own way said pretty much the same thing. And the reason is because Dr. Amen said it, Dr. Young said it. If you take that brain, as bad as it is, and then you add what we have here -- one of these runs, prolonged, sustained, methamphetamine abuse, and what it does to the brain -- and then throw in some sleep deprivation on the side, it's exponentially worse.

And again, Dr. Amen told you about his qualifications, told you about all the things, many of the things that he does, how he makes presentations to bar associations, to legal entities, how he was called up by a judge to say: I need somebody to evaluate this person. I know of your reputation, I know the kind of work you do. I would like you to do this for me and get involved in this case. We have all sorts of stuff like that. This man has looked at, he said 25,000, but you got to cut it in half because of two scans per brain. You're talking about somebody that's looked at, read, reviewed, analyzed, evaluated over 12,000 brains.

And wasn't it interesting that Dr. Smith, who's in a completely different field -- remember, he is in addictive medicine, he knew about Dr. Amen. He knew about the value of SPECT imaging. He told you about that. We heard from Dr. Young. She told you the same thing. I'm a neuropsychologist. I've been doing it since '89 or '90, whatever it was.

PROOF OF SERVICE BY MAIL

I, Monte Haney, declare that I am over 18 years of age, and a party to the attached herein cause of action, that I reside at California State Prison at Corcoran, in the County of King, California.

My mailing address is: P.O. Box 3476 Corcoran CA 93212

On _____, 20____, I delivered to prison officials for mailing, at the above address, the attached: traverse, memorandum of Points and authorities in support thereof consisting of 71 Pages total.

in sealed envelope(s), with postage fully prepaid, and addressed to the following:

(1) clerks office
U.S. District court - No. Dist. of CA
450 Goldengate Avenue, 16th floor
Sanfrancisco, CA 94102

(2) _____

(3) _____

(4) _____

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 5 day of September, 2008, at California State Prison, Corcoran.

Monte Haney
In Pro Per

Monte Haney V-72062 4A-2R-59
Corcoran State Prison
P.O. Box 3476
Corcoran, CA 93212

CORCORAN STATE PRISON

Attn: clerk of the court
& the honorable Judge
clerk's office
U.S. District court-N
450 Goldengate Ave
Sanfrancisco, CA 941

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CA Penal Code 2601 Confidential Correspondance
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